



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

APR 23 2002

CC:NTA:SSeemann

MEMORANDUM FOR CHERYL HARSKOWITCH  
DIRECTOR, TAXPAYER ACCOUNT OPERATIONS  
C:TA:TAO

FROM: Carol A. Campbell *CAC*  
Counsel to the National Taxpayer Advocate

SUBJECT: Ex Parte Communications with Appeals

This memorandum is provided in response to an issue you raised regarding whether Taxpayer Advocate Service employees are subject to the prohibition against ex parte communication with the Office of Appeals for matters in which the TAS employee is exercising delegated authorities.

ISSUE

Whether Taxpayer Advocate Service (TAS) employees are subject to the prohibition against ex parte communication with Appeals officers mandated by section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub L. 105-206, 112 Stat. 685 (RRA 98).

CONCLUSION

TAS employees are subject to the prohibition of ex parte communications with Appeals employees as mandated by section 1001(a)(4) of RRA 98 in those cases which are before Appeals or may come before Appeals as a result of a TAS employee having exercised the authority delegated to the TAS by Delegation Order 267.

DISCUSSION

Section 1001(a)(4) of RRA 98 provides that the plan to reorganize the Internal Revenue Service (IRS) shall ensure an independent Appeals function within the IRS, including the prohibition in the plan of ex parte communications between Appeals officers and other IRS employees to the extent that such communications appear to

DP

PMTA : 00532

compromise the independence of the Appeals employees. (Emphasis Added). In response to this directive, Rev. Proc. 2000-43, 2000-2 C.B. 404, was issued. This revenue procedure is in question and answer format and provides guidance concerning the ex parte communications prohibition described in section 1001(a)(4) of RRA 98.

Q & A - 1 of the revenue procedure defines ex parte communication and provides the general rule that for purposes of Rev. Proc. 2000-43, ex parte communications are communications that take place between Appeals and another IRS function without the participation of the taxpayer or the taxpayer's representative. It further provides that while RRA 98 refers to Appeals officers, the overall intent of the ex parte provision is to ensure the independence of the entire Appeals organization. A -1 therefore concludes that ex parte communications between any Appeals employee and employees of other IRS offices are prohibited to the extent that such communications appear to compromise the independence of Appeals.

Like Appeals, the Taxpayer Advocate Service was created as an independent function within the IRS. See I.R.C. § 7803(c)(4)(A)(iii). Although independent of other IRS functions, TAS employees, however, are IRS employees within the scope of Q & A-1.

With respect to the TAS, Q & A - 18 of Rev. Proc. 2000-43 specifically addresses the question: "Does the prohibition on ex parte communications have any impact on Appeals communications with the Taxpayer Advocate Service (TAS) on an open case?" The answer given is: "No. Communications by Appeals with the TAS that are initiated by the TAS are not subject to the prohibition because the Appeals Officer may assume that the TAS is acting at the request, and with the consent, of the taxpayer."

The response provided to this question is intended to cover those situations where TAS is acting on behalf of a taxpayer to help move a case to or through Appeals. It does not cover any situation where TAS has made a determination using the delegated authorities that provides the taxpayer with a right to Appeals consideration. Delegation Order 267 authorizes TAS employees to make determinations that in some instances provide taxpayers with appeal rights. For example, denying a taxpayer's request for an installment agreement or denying a request to abate a penalty provide the taxpayer with the opportunity for appeal. Because the taxpayer may appeal such an action, TAS employees would be subject to the ex parte communication provisions of Rev. Proc. 2000-43, in the same manner as any other IRS employee. TAS employees cannot engage in ex parte communications with Appeals employees when the TAS employee made the determination that is the subject of the appeal.

The rule outlined in Q & A -18 of Rev. Proc. 2000-43 will not apply in instances where TAS employees are exercising delegated authorities, as this rule would not apply to

other Service personnel exercising the same authorities.<sup>1</sup> TAS employees should be made aware that the exception to the ex parte communication rules provided to the TAS in Q&A -18 does not apply in any instance that a delegated authority creates for the taxpayer a right to consideration by the office of Appeals. In these cases, TAS must adhere to the overall provisions of Rev. Proc. 2000-43 and refrain from ex parte communications with Appeals employees.

 DP

If you have questions or need additional information regarding this issue or this memorandum, please contact Stan Seemann at 202-622-4947.

---

<sup>1</sup> The rule outlined in Q&A -18 is not applicable to TAS employees exercising the authorities found in Delegation Order 267, which provide the taxpayer with a right to Appeals consideration, i.e., authorities that are applicable to other functions within the Service. The rule will continue to apply to authorities that are delegated to TAS employees only, as these authorities are not applicable to other functions within the Service and do not provide the taxpayer with the right to further review by the office of Appeals.